

**Statement for the Record
Bettye B. McNutt
Surviving Spouse of Vietnam War Veteran Ronald A. McNutt**

Before the

**Subcommittee on Disability Assistance and Memorial Affairs
Committee on Veterans' Affairs
U. S. House of Representatives**

Regarding

**“Adjudicating VA’s Most Complex Disability Claims:
Ensuring Quality, Accuracy and Consistency on Complicated Issues”**

December 4, 2013

Introduction

Thank you Chairman Jon Runyan and Ranking Member Dina Titus for holding today's hearing about "Adjudicating VA's Most Complex Disability Claims: Ensuring Quality, Accuracy and Consistency on Complicated Issues."

My name is Bettye B. McNutt, and I am the widow of Vietnam War Veteran Ronald A. McNutt. Accompanying me is my attorney handling my claim, Glenn R. Bergmann, a partner of Bergmann & Moore based in Bethesda, Maryland.

I am honored to be here to testify before the Committee on Veterans' Affairs. The Subcommittee on Disability and Memorial Affairs invited me here today to discuss what has become a complex and now 23-year old claim for Dependency and Indemnity Compensation (DIC).

DIC is a benefit provided by the U.S. Department of Veterans Affairs (VA) for surviving family members when a Veteran dies of a service-connected medical condition.

I am here for two reasons. First, I am here seeking justice for myself and my family. I ask VA to correctly and promptly apply the law and grant my claim. I have waited eight thousand six hundred days too long. Without immediate intervention, my claim is destined to remain open for several more years as I wait, hoping and praying for VA to properly decide my claim. Because of VA's frequent mistakes, I have been forced to live in poverty sometimes without heat and electricity as a widow raising a son orphaned by the Vietnam War.

Second, I am here seeking justice for the other widows and orphans of our Vietnam War veterans, as I am well aware that there are many like me. In the audience today is my son, Brandon, and my niece, Sandra Peterson. She is the daughter of a Vietnam War veteran who also died from Agent Orange poisoning. Widows and their families should not be subjected to decades of delay. Sadly when faced with a denial most people give up. I think VA knows this. VA must quickly grant the worthy claims of other widows and orphans. VA must follow the law.

The unnecessary waiting must end now, for me and for the many hundreds of other widows and orphans coping with the loss of a loved one due to cancers associated with exposure to Agent Orange during the Vietnam War.

Ronald A. McNutt, 1947 - 1987

My late husband Ronnie was born in Memphis, Tennessee on December 31, 1947. As a 19-year old college student, he was drafted into the U.S. Army as an infantryman. Ronnie served honorably between November 16, 1967, and June 19, 1969. Ronnie deployed to the Vietnam War from April 30, 1968, to June 16, 1969. On September 22, 1987, at the early age of 39, he died from an aggressive form of cancer, leaving me a widow with a young son. His death came quickly from a cancer that invaded many parts of his body. Ronnie died within five months of his first diagnosis of cancer.

I brought two pictures of my Ronnie with me today because this hearing is about my husband. He died because of the Vietnam War and his service to our country. On his death bed, just weeks before he died, he told me about how he swam in waters highly contaminated with Agent Orange. He told stories about using discarded Agent Orange barrels as makeshift barbeques. There is no doubt in my mind and in my doctor's professional opinion that the dioxin poison in Agent Orange killed my Ronnie.

I am here because our nation makes a solemn commitment to the families of our Veterans. At the west end of the Washington Mall, inside the Lincoln Memorial, are these important words:

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

One phrase from President Abraham Lincoln is memorialized on a plaque on the front of the VA central office one block from the White House here in Washington, DC:

... to care for him who shall have borne the battle and for his widow and his orphan.

Request to VA

I am here today seeking justice in my husband's name, as VA appears to have forgotten the second part of the phrase, "for his widow and his orphan." VA is not doing the job the American people expect and our Veterans' families deserve.

This claim has become complex despite the fact that I have satisfied all the legal requirements for DIC benefits. First, VA has not contested that my husband deployed to the Vietnam War, as shown by his discharge papers. Second, the law presumes Veterans deployed to the Vietnam War were exposed to Agent Orange. And, third, a medical expert provided VA with a "nexus" medical opinion concluding Ronnie's cancer was "as likely as not" due to exposure to Agent Orange during his deployment to Vietnam.

Complex Claim

I originally filed my claim with the Jackson, Mississippi VA Regional Office on May 19, 1990. My DIC claim is difficult because it deals with Agent Orange on a direct basis. At one point, VA deferred (although probably lost) my claim for nearly 12 years, from 1994 to 2006, apparently waiting on new research about the harmful effects of Agent Orange. I believe VA lost or simply forgot to process my claim until I reminded the agency about it in 2006.

However, VA needlessly made my claim far more complex. VA gave contradictory reasons for denial; applied the wrong legal standard; ignored evidence favorable to my claim; and sought evidence to deny my claim.

In summary, during my 23 year battle to obtain VA benefits, VA improperly denied my claim seven times. Despite the fact that my DIC claim was returned by the Court of Appeals for Veterans Claims (Court) three times based on VA errors, VA still refuses to follow the law and science and grant my claim.

My letters to the President and Congress are simply referred back to VA without action by VA. I feel that VA is waiting for me to die.

VA Errors

My 23 years fighting for justice is complicated and lengthy. I provided the Subcommittee with a detailed chronology which appears at the end of my statement.

In summary, VA has made six significant mistakes on my claim. As a result, my claim now sits once again at the Board of Veterans' Appeals (Board) awaiting adjudication yet again here in Washington, DC. Here are the most salient facts regarding VA's chronic errors.

1. VA's first error: VA did not issue a Statement of the Case. On May 19, 1990, I filed my claim at the Jackson, Mississippi regional office. On December 10, 1990, VA improperly denied my claim. On February 7, 1991, I filed a timely Notice of Disagreement (NOD) to begin the appeal process. On November 16, 1994, VA issued a second rating decision. However, VA never issued a Statement of the Case in response to my original NOD, thus leaving my claim open and unadjudicated.
2. VA's second error: In response to a letter I wrote to VA on February 17, 2006, VA incorrectly considered my letter as a request to reopen my claim, even though my claim remained open and unadjudicated since 1990. Despite this, on June 3, 2006, VA denied my claim on the grounds I did not provide new and material evidence.
3. VA's third error: On June 3, 2006, VA approved a death pension, even though I didn't apply for it. I returned the check they sent me because it was incorrect.
4. VA's fourth error: On August 4, 2009, the Board incorrectly denied my claim because it found that Ronnie's cancer was not on the list of presumptive diseases associated with Agent Orange exposure.
5. VA's fifth error: On March 4, 2011, despite the existence of a favorable medical opinion by Dr. Carey that found a causal link between my husband's death and exposure to Agent Orange in Vietnam, the Board again denied the claim because my husband's cancer was not the type of cancer on the list of presumptive diseases associated with Agent Orange exposure.
6. VA's sixth error: In a March 2012 letter to the Chief of Staff at the VA Medical Center in West Virginia, the Board declared the private medical opinion which it had previously stated it had "no reason to doubt" was contradictory and ordered its own independent medical expert opinion. Relying on an outdated Institute of Medicine (IOM)

study, the ensuing VA opinion found that there was a less than 50% probability that my husband's cancer was the result of in-service herbicide exposure.

7. VA's seventh error: In September 2012, the Board denied my claim again finding the VA medical opinion more probative than the private medical opinion, despite a follow-up medical opinion refuting the VA examiner's findings and a written brief submission by my attorneys on August 6, 2012.

I am upset at VA's behavior because VA appears to be opposing me at every turn. VA can easily grant my claim right now if they reviewed the evidence of record and correctly applied the law. This is not a difficult claim, but VA has made it complex. VA denied my claim for 23 unbearable years based on conflicting reasons. If VA follows the law and stops their seeming effort to undermine my claim, it will be granted as I have satisfied all the requirements DIC.

Hardship

As noted above, I commenced this claim some 23 years ago. VA has provided inconsistent reasons for denying my claim which continues to cause me enormous frustration and hardship.

The impact on my son Brandon was tremendous. He lost his father at the age of 12. Ronnie's death upended Brandon's young life. He started failing in school, suffered from nightmares, and severe nervousness which resulted in ridicule by teachers and students because of the change in his behavior. His dad did not see him graduate from high school, attend his prom, or be there to mentor him as a good father.

For me, I've suffered unimaginable emotional grief from Ronnie's death. I've done the best I can as a widow to provide for my son. Despite the fact that I worked, my son and I experienced severe economic hardship. We simply learned to do without for a very long time. There were times when we did not have enough food. We learned to rely on friends and even strangers to provide simple groceries. I would sometimes come home in the dark to a house that had no heat or electricity because I could not afford to pay the bills.

It sickens my heart that VA simply does not follow the law or science. My claim should have been granted decades ago.

8,600 Days

In conclusion, I seek justice for my husband Ronald who died from cancer due to Agent Orange poisoning. I ask VA to grant my DIC claim. I have waited eight thousand six hundred days too long.

For the other widows and orphans of Vietnam War veterans who died due to Agent Orange, I ask VA to improve training so that VA employees follow the law, consider favorable evidence, and stop trying to find reasons to deny claims.

This is not just about me. In 2003, Congress passed a law mandating that VA expeditiously process appeals like mine. However, VA routinely ignores this law. Today, VA's "expeditious" treatment equates to at least four more years of additional delay.

I wish Congress would put teeth into that law so the thousands of other widows and Veterans get accurate and prompt decisions on their VA appeals.

Thank you again for this opportunity to appear here today. I will gladly answer your questions.